

Internal Revenue Service
memorandum

date: AUG 19 1991

to: Railroad Industry Field Counsel
District Counsel, Kansas City

from: Technical Assistant, Office of the Assistant Chief Counsel
(Employee Benefits and Exempt Organizations)

subject: Assessments Based Upon Railroad Retirement Board/Office of
Inspector General "Audits"

This responds to your March 21, 1991, memorandum to the Assistant Chief Counsel, Employee Benefits and Exempt Organizations, referring to the January 28, 1991, Memorandum issued to the Assistant Commissioner (Examination) concerning the current Memorandum of Understanding between the Examination Division and the Office of Inspector General, that reflects the current views of this office and should be treated as formal legal opinion. See, in particular, the answer to Questions 3 and 4. A copy of the memorandum is attached.

In keeping with the opinion expressed in the January 28, 1991, memorandum we believe the Service should permit the taxpayer the opportunity to explain any discrepancies that arise out of the Railroad Retirement Board's reconciliations or audit reports. However, once such an opportunity has been given, and the assessment has been made determining that a certain amount of tax is currently due and owing under Section 6201 of the Code, the assessment would be presumed correct.

It is not necessary to abate the assessment if the Service has provided the taxpayer an opportunity to submit information upon which the Service could make an independent determination of employment tax liability. Abatements would be inappropriate where the taxpayer has paid the assessment, but in the future the procedures outlined in the previous memo should be followed.

Any questions you may have on this matter should be directed to Thomas Foley at FTS 566-4748.

(Signed) Ronald L. Moore

Ronald L. Moore

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Attachment:
As stated above.

Internal Revenue Service
memorandum

date: JAN 28 1991

to: Assistant Commissioner (Examination) EX
Attention: Okley Dale Ammons

from: Assistant Chief Counsel
(Employee Benefits and Exempt Organizations) CC:EE

subject: Memorandum of Understanding with Office of Inspector General
of the Railroad Retirement Board

You asked for our views on several questions relating to the current Memorandum of Understanding (MOU) between the Examination Division and the Office of Inspector General (OIG), of the Railroad Retirement Board (RRB).

Question 1

You ask whether the MOU should be amended to take into account the understanding the RRB has with our office regarding the exchange of technical information. The MOU currently provides that the Internal Revenue Service will furnish technical assistance to the OIG of the RRB in conjunction with their railroad employer review activities. The MOU also provides that assistance will be requested through the IRS's railroad industry specialist in St. Louis.

In 1973, the Assistant Commissioner (Technical) entered into an agreement with the RRB to coordinate tax and coverage issues and to exchange views on technical matters to ensure uniform treatment by both agencies. We, therefore, see no problem with the OIG seeking guidance from your railroad industry specialist. Furthermore, if it becomes necessary, under existing procedures, the specialist may seek assistance from the National Office. We do suggest that any technical issues on which there is disagreement between the agencies be referred to this office by the industry specialist, and concurrently the OIG should refer the matter to the General Counsel of the RRB for coordination as provided under the 1973 agreement. To this extent we suggest that the MOU be amended.

Question 2

You indicate that a taxpayer is contesting the OIG's authority to conduct "reviews" or "examinations". You ask how this impacts on the MOU. You also ask whether the OIG could be considered a contractor for the IRS.

The MOU provides that the Service and OIG will cooperate with respect to our respective efforts to examine/review the employment taxes of railroad employers. The specific details of this cooperation are to be determined prior to the commencement of any joint examination/review activity. It is our understanding that the Service is not currently engaged in any joint examination/reviews with the OIG. However, the Service has been advised by the OIG that their authority to conduct taxpayer "reviews" is currently an issue before a federal district court in Texas. In view of the litigation we recommend, at least until the courts have decided the matter, that the Service only undertake joint examination/review efforts if the taxpayer does not object.

We do not believe that the OIG could be considered a Service contractor for the review or examination of taxpayers. The authority to conduct examinations is delegated only to authorized officers and employees of the IRS. There is no provision in the Internal Revenue Code that authorizes the Service to delegate this authority to the OIG or contract with the OIG for this activity.

Question 3

You ask whether the Service Center can assess taxpayers based on the RRB periodic reconciliations.

With the exception of one limited area, not pertinent here, it does not appear that the Service has the authority to make direct assessments against taxpayers solely on the basis of certifications made by other agencies. Section 6201 of the Code provides that the Secretary is authorized and required to make the inquiries, determinations, and assessments of all taxes imposed by the Internal Revenue Code. Generally, an assessment made by the Service is presumptively correct and the taxpayer bears the burden to show otherwise. However, we believe it would be ill advised of the Service not to permit a taxpayer the opportunity to offer an explanation of any discrepancies that arise out of the RRB's reconciliations. We do not always agree with the Board on a particular matter. We recommend that the Service use RRB reconciliations in a manner similar to the procedures in place for reconciling discrepancies brought to light by the Social Security Administration.

Question 4

You state that the OIG conducts audits of railroads and provides IRS with copies of their audit reports. You ask whether the Service could make assessments based on these reports. Our answer to question 3 is equally applicable here. We do not believe the audit reports should be used as

authority to make direct assessments without allowing the taxpayer an opportunity to offer an explanation.

If we can be of any further assistance in this matter, please contact my Technical Assistant for Employment Tax, Ronald L. Moore. His telephone number is 566-4748.

(signed) JAMES J. MCGOVERN

James J. McGovern